

## CHAPTER SCR 40 APPENDIX

### RULES OF THE BOARD OF BAR EXAMINERS

**NOTE:** 2005 Wis. Act 451, which made major revisions to the election laws, including to Chapter 5, contains an extensive prefatory note explaining the changes.

**Note:** SCR Chapter 40 Appendix was amended December 12, 1991; December 8, 1994; October 1, 1995; January 21, 1997; August 22, 2002; August 17, 2004; January 16, 2008; May 1, 2009, September 23, 2011.

#### LEGAL COMPETENCE REQUIREMENT: BAR EXAMINATION

**BA 4.02 Accommodations.** Testing accommodation requests must be received in writing no later than December 1 for the February examination and May 1 for the July examination. The Board may deny requests that are not in writing or that are filed after the deadline.

**History:** Bd. of Bar Examiners Order, eff. 12–8–94, 188 Wis. 2d xxi (1994); Bd. of Bar Examiners Order, dated 2–27–09, eff. 5–1–09.

**BA 4.03 (a)** The Board authorizes its staff to close any bar examination application that remains incomplete six months following the date on which the letter notifying the applicant of his or her passing score is mailed from the Board office.

**NOTE: (b)** Staff closure of a file is appealable to the Board.

**History:** Bd. of Bar Examiners Order, eff. 12–8–94, 188 Wis. 2d xxi (1994); Bd. of Bar Examiners Order, eff. 4–6–05, 282 Wis. 2d xiii (2005); Bd. of Bar Examiners Order, dated 2–27–09, eff. 5–1–09.

#### LEGAL COMPETENCE REQUIREMENT: PROOF OF PRACTICE

**BA 5.01 (a)** The board authorizes its staff to close any application for admission on proof of practice elsewhere that remains incomplete one year following the date the application was filed with the Board.

**NOTE: (b)** Staff closure of a file is appealable to the Board.

**History:** Bd. of Bar Examiners Order, eff. 1–21–97 207 Wis. 2d xiii (1997); Bd. of Bar Examiners Order, eff. 4–6–05, 282 Wis. 2d xiii (2005); Bd. of Bar Examiners Order, dated 2–27–09, eff. 5–1–09.

#### REQUIREMENT AS TO CHARACTER AND FITNESS TO PRACTICE LAW

**NOTE: BA 6 Preamble.** These rules are adopted in furtherance of SCR 40.06 (1), (3), (3m) and SCR 40.07.

**BA 6.01 Standard of character and fitness.** A lawyer should be one whose record of conduct justifies the trust of clients, adversaries, courts and others with respect to the professional duties owed to them. A record manifesting a deficiency in the honesty, diligence or reliability of an applicant may constitute a basis for denial of admission. The Supreme Court Rules place on the applicant the burden of producing information sufficient to affirmatively demonstrate the character and fitness appropriate for bar admission.

**BA 6.02 Relevant conduct or condition.** The revelation or discovery of any of the following should be treated as cause for further inquiry before the Board decides whether the applicant possesses the character and fitness to practice law:

**NOTE: (a)** unlawful conduct

**NOTE: (b)** academic misconduct

**NOTE: (c)** false statements by the applicant, including concealment or non-disclosure

**NOTE: (d)** acts involving dishonesty or misrepresentation

**NOTE: (e)** abuse of legal process

**NOTE: (f)** neglect of financial responsibilities

**NOTE: (g)** neglect of professional obligations

**NOTE: (h)** violation of an order of a court

**NOTE: (i)** evidence of mental or emotional impairments substantial enough to affect the applicant's ability to practice law

**NOTE: (j)** evidence of drug or alcohol dependency

**NOTE: (k)** denial of admission to the bar in another jurisdiction on character and fitness grounds

**NOTE: (L)** disciplinary action by a lawyer disciplinary agency or other professional disciplinary agency of any jurisdiction

**History:** Bd. of Bar Examiners Order, dated 2–27–09, eff. 5–1–09.

**BA 6.03 Use of information.** The Board will determine whether the present character and fitness of an applicant qualifies the applicant for admission. In making this determination through the processes described above, the following factors should be considered in assigning weight and significance to prior conduct:

**NOTE: (a)** the applicant's age at the time of the conduct

**NOTE: (b)** the recency of the conduct

**NOTE: (c)** the reliability of the information concerning the conduct

**NOTE: (d)** the seriousness of the conduct

**NOTE: (e)** the mitigating or aggravating circumstances

**NOTE: (f)** the evidence of rehabilitation

**NOTE: (g)** the applicant's candor in the admissions process

**NOTE: (h)** the materiality of any omissions or misrepresentations

**NOTE: (i)** the number of incidents revealing deficiencies

**BA 6.04 Notice of an at-risk application.** If the Board determines that an application is at risk of being denied, the Board shall notify the applicant of its determination in writing. The notice shall state the reasons for the possible denial, describe the applicant's right to seek a hearing, advise the applicant of the deadline for requesting a hearing and include a copy of the Board's hearing procedures.

**History:** Bd. of Bar Examiners Order, eff. 8–22–02, 254 Wis. 2d xv; Bd. of Bar Examiners Order, dated 2–27–09, eff. 5–1–09.

**BA 6.045 (a)** At the time of mailing the notice of an at-risk application, the Board shall provide the applicant with copies of all materials that were reviewed by the Board in making its decision. Thereafter, while the application is under review, the applicant may review all materials in the applicant's file during the Board's business hours, and may obtain copies thereof at a cost of no more than twenty-five cents per page.

**NOTE: (b)** Materials solicited by the Board before October 1, 2008 under an unconditional promise of confidentiality are not subject to review by the applicant under sub. (a) and will not be considered by the Board.

**History:** Bd. of Bar Examiners Order, dated 2–27–09, eff. 5–1–09.

**BA 6.05 Diploma privilege.** An applicant for admission under diploma privilege shall file an application for a character and fitness certification with the Board. The Board shall establish that the applicant has the qualities of character and fitness needed to practice law and, following certification from the dean of compe-

tence under SCR 40.03, shall certify to the Supreme Court the qualifying applicants for admission.

**History:** Bd. of Bar Examiners Order, eff. 10–1–95, 194 Wis. 2d xxi (1995); Bd. of Bar Examiners Order, eff. 8–22–02, 254 Wis. 2d xv.

**BA 6.06 (a)** The Board authorizes its staff to close any application for a character and fitness certification that remains incomplete one year following the date the application was filed with the Board.

**NOTE: (b)** Staff closure of a file is appealable to the Board.

**History:** Bd. of Bar Examiners Order, dated 1–23–97, eff. 1–21–97; Bd. of Bar Examiners Order, eff. 8–22–02, 254 Wis. 2d xv; Bd. of Bar Examiners Order, eff. 4–6–05, 282 Wis. 2d xiii (2005); Bd. of Bar Examiners Order, dated 2–27–09, eff. 5–1–09.

## WAIVER OF REQUIREMENTS

**BA 10.01** The Board may waive any of the requirements of this Appendix in exceptional cases and for good cause. An application and the filing fee appropriate to the rule must accompany the request for waiver. One-half of the filing fee will be refunded if the waiver is denied.

**History:** Bd. of Bar Examiners Order, eff. 12–8–94, 188 Wis. 2d xxi (1994); Bd. of Bar Examiners Order, dated 2–27–09, eff. 5–1–09.

## APPLICATION; FEES

**BA 14.01** Applications and supporting documentation must be submitted in original form. The Board will not accept facsimile transmissions in satisfaction of its filing requirements.

**BA 14.02** An application for bar admission, or for a character and fitness certification pursuant to SCR 40.06 (3m), will not be filed unless:

**NOTE: (a)** It is accompanied by a signed and notarized authorization and release form; and

**NOTE: (b)** It is accompanied by the applicable filing fees.

**History:** Bd. of Bar Examiners Order, eff. 12–8–94, 188 Wis. 2d xxi (1994); Bd. of Bar Examiners Order, eff. 10–1–95, 194 Wis. 2d xxi (1995); Bd. of Bar Examiners Order, dated 2–27–09, eff. 5–1–09.

**BA 14.025** Handwritten applications will not be accepted.

**History:** Bd. of Bar Examiners Order, dated 2–27–09, eff. 5–1–09.

**BA 14.03 Continuing application.** Applications are continuing applications during their pendency. Applicants are required to notify the Board in writing of any changes with respect to the information elicited by the application, and each application must be amended to reflect the facts throughout the entire time that the application is pending, including the date on which the applicant is admitted to practice in Wisconsin.

**History:** Bd. of Bar Examiners Order, eff. 12–8–94, 188 Wis. 2d xxi (1994); Bd. of Bar Examiners Order, dated 2–27–09, eff. 5–1–09.

**BA 14.04 Application deadline. (a)** Applicants for bar admission on the diploma privilege shall file an application for a character and fitness certification with the Board between the time the student has completed a minimum of 50 credit hours and a pre-determined date after the J.D. is conferred (February 1 for December graduates; July 1 for May graduates; October 1 for August graduates).

**NOTE: (b)** Notwithstanding subsection (a), applicants otherwise eligible for admission on the diploma privilege may apply by December 31 of the year following their graduation from law school if by that date they document that they have passed a bar examination, and have been admitted to practice, in another US state, territory, or the District of Columbia.

**NOTE: (c)** Applicants who miss the filing deadline in subsection (a) may forfeit their chance to be admitted under the diploma privilege.

**History:** Bd. of Bar Examiners Order, eff. 10–1–95, 194 Wis. 2d xxi (1995); Bd. of Bar Examiners Order, dated 2–27–09, eff. 5–1–09.

**BA 14.05 Late fees: diploma privilege.** A late fee will be assessed to the following applicants for bar admission on the diploma privilege: May graduates who have not filed an application by the preceding December 15; August graduates who have not filed an application by the preceding March 15; and December graduates who have not filed an application by the preceding July 15.

**History:** Bd. of Bar Examiners Order, eff. 10–1–95, 194 Wis. 2d xxi (1995); Bd. of Bar Examiners Order, dated 2–27–09, eff. 5–1–09.

## BOARD MEETINGS

**BA 15.01** As an agency of the Supreme Court, the Board is not subject to Subchapter V of Chapter 19 of the Wisconsin Statutes, relating to open meetings of governmental bodies. However, the Board posts the dates, locations and agendas of its meetings on its Internet web site and invites the public to attend its meetings. Members of the public are not allowed to attend meetings or parts of meetings that involve confidential matters. Examples of confidential matters include (i) individuals' applications for admission to the Wisconsin bar, (ii) hearings on admission applications and (iii) bar examination questions.

**History:** Bd. of Bar Examiners Order, dated 2–27–09, eff. 5–1–09.

## PROCEDURES FOR HEARINGS BEFORE THE BOARD

**BA 16.01 Application.** These rules govern all hearings before the Board of Bar Examiners.

**History:** Bd. of Bar Examiners Order, dated 2–27–09, eff. 5–1–09.

**BA 16.02 Notice of an at-risk application.** Before declining to certify an applicant's satisfaction of requirements under this chapter, the board shall notify the applicant in writing of the basis for its determination that the application is at risk of being denied and, except as to failure of the bar examination under SCR 40.04, the applicant shall have the opportunity to respond in writing within thirty days of the mailing of notification of the board's decision to the applicant at the last address furnished by the applicant in writing to the board.

**History:** Bd. of Bar Examiners Order, dated 2–27–09, eff. 5–1–09.

**BA 16.03 Hearings.** The Board shall grant a hearing to any applicant who has received a notice under SCR 40.08 (1).

**History:** Bd. of Bar Examiners Order, dated 2–27–09, eff. 5–1–09; Bd. of Bar Examiners Order, dated and eff. 9–23–11.

**BA 16.04 Request for hearing.** Applicants must make their requests for a hearing in writing within 30 days after the mailing of the notice under SCR 40.08 (1).

**History:** Bd. of Bar Examiners Order, dated 2–27–09, eff. 5–1–09.

**BA 16.05 Review of records.** Applicants who have received a notice under SCR 40.08 (1) may, while the application is pending, review, personally or by counsel, all materials in the applicant's files, including any staff recommendations. Upon written request, the Board will transmit copies of these materials to the applicant or the applicant's counsel at a cost not to exceed twenty-five cents per page. Materials solicited by the Board before October 1, 2008 under an unconditional promise of confidentiality are not subject to review by the applicant.

**History:** Bd. of Bar Examiners Order, dated 2–27–09, eff. 5–1–09.

**BA 16.06 Pre-hearing conference.** Within 30 days after receiving an applicant's Request for Hearing, the Board Chair or the Chair's designee shall confer in person or by telephone with the applicant or the applicant's counsel to set a hearing date, clarify the issues, determine whether the applicant will stipulate to any material facts, consider any limitations on the number of wit-

**3 Updated 13–14 Wis. Stats.****RULES OF BAR EXAMINERS BA 16.21**

nesses, the length of the hearing and such other matters as may aid the Board in its determination. Promptly after this pre-hearing conference, the Chair or the Chair's designee shall prepare a memorandum for the record which summarizes all actions taken at the conference. The memorandum shall control the subsequent course of the action, unless modified at the hearing to prevent manifest injustice.

**History:** Bd. of Bar Examiners Order, dated 2–27–09, eff. 5–1–09.

**BA 16.065 Hearing.** An applicant who has timely requested a hearing under SCR 40.08 (2) shall have the right to appear in person and with counsel, to make an opening statement, to call, examine, and cross-examine witnesses, and to offer evidence into the record.

**History:** Bd. of Bar Examiners Order, dated and eff. 9–23–11.

**BA 16.07 Hearing record.** The hearing record shall include evidence received or considered, stipulations and admissions, a statement of matters officially noticed, questions and offers of proof, objections and rulings thereon, any proposed findings or decisions and exceptions, and any decision, opinion or report by the Board.

**History:** Bd. of Bar Examiners Order, dated 2–27–09, eff. 5–1–09.

**BA 16.08 Counsel.** An applicant shall be entitled to be represented by counsel at hearing at the applicant's expense, provided a notice of appearance is filed at or before the hearing.

**History:** Bd. of Bar Examiners Order, dated 2–27–09, eff. 5–1–09.

**BA 16.09 Record of proceedings.** A stenographic, electronic or other record of oral proceedings shall be made. If the board obtains a transcript of proceedings, it shall, upon request, provide the applicant with a copy at a cost not to exceed twenty-five cents per page.

**History:** Bd. of Bar Examiners Order, dated 2–27–09, eff. 5–1–09.

**BA 16.10 Presiding officer.** The Board Chair or the Chair's designee shall preside at hearing, and shall rule on motions, objections and any other matters that arise.

**History:** Bd. of Bar Examiners Order, dated 2–27–09, eff. 5–1–09.

**BA 16.11 Rules of evidence.** The Board is not bound by common law or statutory rules of evidence.

**History:** Bd. of Bar Examiners Order, dated 2–27–09, eff. 5–1–09.

**BA 16.12 Hearing record.** The applicant and any member of the Board may move that portions of the applicant's file be received in evidence. All evidence received at the hearing shall be made a part of the hearing record. The applicant shall be afforded adequate opportunity to rebut or offer countervailing evidence.

**History:** Bd. of Bar Examiners Order, dated 2–27–09, eff. 5–1–09.

**BA 16.13 Official notice.** The Board may take official notice of any generally recognized fact or any established technical or scientific fact, but the applicant shall be notified either before or during the hearing of the facts so noticed, and shall be afforded an opportunity to contest the validity of the official notice.

**History:** Bd. of Bar Examiners Order, dated 2–27–09, eff. 5–1–09.

**BA 16.14 Documents.** Documentary evidence may be received in the form of copies or excerpts if the original is not readily available.

**History:** Bd. of Bar Examiners Order, dated 2–27–09, eff. 5–1–09.

**BA 16.15 Testimony.** Witnesses may be heard in person, or their testimony may be received in the form of affidavits or deposition transcripts. As a general practice, examinations and cross-examinations of witnesses shall be made by the members of the Board. Applicants or their counsel may cross-examine adverse witnesses.

**History:** Bd. of Bar Examiners Order, dated 2–27–09, eff. 5–1–09.

**BA 16.16 Record may remain open.** The Chair or the Chair's designee may allow the record of the hearing to remain open for a limited period of time, which shall be specified, to give the applicant an opportunity to submit additional written materials.

**History:** Bd. of Bar Examiners Order, dated 2–27–09, eff. 5–1–09.

**BA 16.17 Determination.** The Board shall make its determination by majority vote of the members present and voting, in person or by telephone. The Board may make its determination immediately following the hearing. Otherwise, the Board shall make its determination no later than at the regularly scheduled meeting next following the date set under Rule 16, unless it decides by majority vote to hold the record open for additional written or oral evidence.

**History:** Bd. of Bar Examiners Order, dated 2–27–09, eff. 5–1–09.

**BA 16.18 Adverse decision.** If the determination is adverse to the applicant, the Board Chair or the Chair's designee shall within sixty days, incorporate the Board's determination in a written decision, which shall include findings of fact and conclusions of law, and shall promptly circulate the decision among all members of the Board. After the decision is circulated, dissenting board members shall have twenty-one days in which to transmit written dissents to the director.

**History:** Bd. of Bar Examiners Order, dated 2–27–09, eff. 5–1–09; Bd. of Bar Examiners Order, dated and eff. 9–23–11.

**BA 16.19 Transmission of decision.** The director shall transmit the Board's decision, together with any written dissents, to the applicant or the applicant's counsel within ten days after completion of the steps set out in Rule 18.

**History:** Bd. of Bar Examiners Order, dated 2–27–09, eff. 5–1–09.

**BA 16.20 Review by board.** An applicant may seek review of an adverse determination by filing a written request with the board within 30 days of the mailing of the adverse determination. A request for review shall be granted only on the basis of a material error of law or fact, or the discovery of new evidence sufficiently strong to reverse the adverse determination. The board shall notify the applicant of its determination by mailing a copy to the applicant at the last address furnished by the applicant in writing to the board. The board's decision shall contain a statement identifying the date of mailing.

**History:** Bd. of Bar Examiners Order, dated 2–27–09, eff. 5–1–09; Bd. of Bar Examiners Order, dated and eff. 9–23–11.

**BA 16.21 Confidentiality.** The hearing shall be closed and written materials, including the board's preliminary and final determinations, shall be confidential and shall be disclosed only to the applicant and the applicant's counsel.

**History:** Bd. of Bar Examiners Order, dated 2–27–09, eff. 5–1–09.